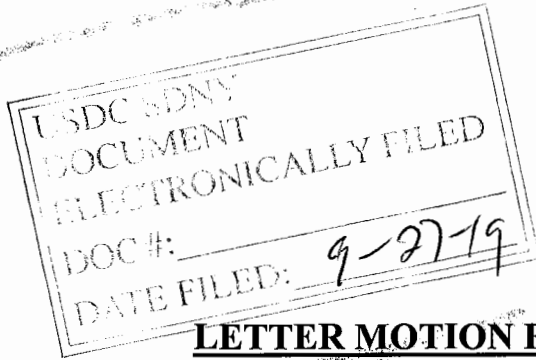


Sweigert v. Goodman, USDC for the SDNY



**D. G. SWEIGERT, C/O
GENERAL DELIVERY
ROUGH AND READY, CA 95975
Spoliation-notice@mailbox.org**

September 24, 2019

**LETTER MOTION FOR RECONSIDERATION
OF MAGISTRATE'S
SCHEDULING ORDER, ECF No. 91**

- Ref: (a) CASE #: 1:18-cv-08653-VEC, Judge Caproni / Magistrate Aaron**
- (b) Magistrate's SCHEDULING ORDER, 10/24/2019, ECF no. 91, for Initial Pre-Trial Conference (IPTC)**

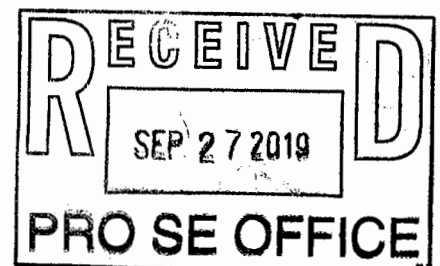
TELEPHONIC APPEARANCE

1. The Magistrate Judge issued ref: (b) as part of the ref: (a) lawsuit to schedule an Initial Pre-Trial Conference (IPTC). Among other things, the undersigned plaintiff hereby requests that he be allowed to appear telephonically for the scheduled hearing to take place on **October 24, 2019** at 11 a.m. in Courtroom 11C.

2. As no evidentiary or deposition activity is planned, this 10/24/2019 hearing appears appropriate for such a telephonic appearance.

MITIGATION OF THE APPEARANCE OF MANIFEST INJUSTICE

3. The Court is presently in peril for not having reasonably foreseen or anticipated the problems created by the present approach of conducting an IPTC prior to docketing of an answer to the complaint, or any counter-claims, by the defendant.



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4. A defendant needs to timely answer an operative complaint (in this case the Second Amended Complaint (2AC) ECF no. 88) and bring forth any counter-claims as it will impact the subsequent course of the action. The premature scheduling of the ref: (b) IPTC apparently does not provide for this eventuality.

5. It appears to be a customary practice for most courts to issue a case management order only after the complaint and answer are filed. Fed. R. Civ. P. 16(b) generally requires the court to create such a scheduling order to address claims and discovery. However, if the defendant adds significant counter-claims after the ref: (b) 10/24/2019 IPTC, it places the plaintiff at a significant procedural disadvantage. This may lead to “*manifest injustice*” as described in Fed. R. Civ. Proc. Rule 16(e).

6. Pursuant to Fed. R. Civ. Proc. Rule 16(b)(2) and (3), district courts enter scheduling orders to establish deadlines for, among other things, “to file motions” and “to complete discovery”. The scheduling order “shall control the subsequent course of the action unless modified by subsequent order”. Fed. R. Civ. Proc. 16(e). Scheduling orders “are the heart of case management,” *Kopple v. Ford Motor Co.*, 795 F.2d 15, 18 (3rd Cir. 1986).

7. In contrast, ref: (b) creates an open-ended deadline for the defendant to file his answer to the complaint. At a minimum, defendant will receive an additional three (3) weeks to file his answer, with several more additional weeks of delay highly likely.

8. The plaintiff was only allowed 21 days (not allowing for the customary three (3) days of service) to prepare and file the 2AC (ECF no. 87). The plaintiff had to allow for mailing of the 2AC, which took another three (3) days. In sum, the plaintiff had only 16-17 days to prepare and file the 2AC.

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RELIEF REQUESTED

9. In order to avoid the appearance of manifest injustice, the undersigned requests that the ref: (b) scheduling order be delayed or modified to provide for the docketing of the defendant's answer and any counter-claims, prior to the initial pre-trial conference.

Sincerely,

D.G. Sweigert
D.G. Sweigert

9.24.19

Copy provided:

Jason Goodman, CEO
Multimedia Systems Designs, Inc.
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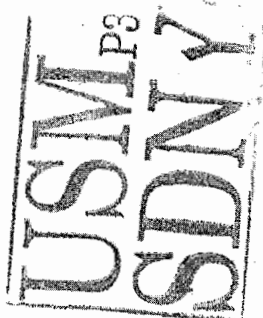
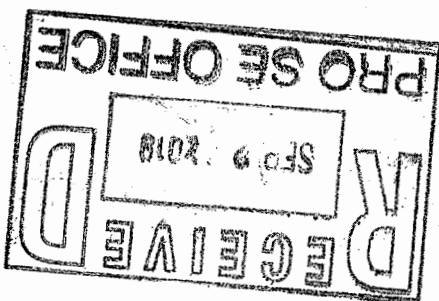
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